

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

AWA Docket No. 05-0014

JOE SCHREIBVOGEL, an individual; and
G.W. EXOTIC ANIMAL MEMORIAL
FOUNDATION (formerly known as G.W.
EXOTIC ANIMAL FOUNDATION), an
Oklahoma nonprofit corporation, doing
business as G.W. EXOTIC ANIMAL
MEMORIAL PARK,

**CONSENT DECISION AND
ORDER**

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondents admit the jurisdictional allegations in the complaint and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Joe Schreibvogel is an individual whose mailing address is RR 2 Box 67, Wynnewood, Oklahoma 73098, and at all times mentioned herein was operating as an exhibitor, as that term is defined in the Act and the Regulations, and held Animal Welfare Act license number 73-C-0139 issued to "JOE SCHREIBVOGEL DBA: GW EXOTIC ANIMAL FOUNDATION."

Respondent Schreibvogel is also the president and executive director of respondent G.W. Exotic Animal Memorial Foundation, and directed, managed and controlled its business

activities. The acts, omissions, and failures to act by respondent Schreibvogel alleged herein were within the scope of said respondent's office, and are deemed the acts, omissions and failures of respondent G.W. Exotic Animal Memorial Foundation, as well as respondent Schreibvogel, for the purpose of construing or enforcing the provisions of the Act and Regulations.

2. G.W. Exotic Animal Memorial Foundation is an Oklahoma domestic nonprofit corporation whose agent for service of process is Joe Schreibvogel Route 2 Box 64, Wynnewood, Oklahoma 73098. At all times mentioned herein, said respondent was operating as an exhibitor, as that term is defined in the Act and the Regulations, and held between 116 and 193 animals regulated pursuant to the Act.

3. APHIS personnel conducted inspections of respondents' facilities, records and animals for the purpose of determining respondents' compliance with the Act, Regulations, and Standards on May 11, 2000 (105 animals inspected), October 30, 2000 (127 animals inspected), August 2, 2001 (128 animals inspected), July 23, 2002 (215 animals inspected), April 4, 2003, November 3, 2003 (123 animals inspected), December 18, 2003 (157 animals inspected), May 4, 2004 (177 animals inspected), October 2, 2004 (traveling exhibit only, 16 animals inspected), and December 14, 2004 (174 animals inspected).

Conclusion of Law

The respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

- (a) Failing to maintain a written program of disease control and prevention, euthanasia, and adequate veterinary care under the supervision of a doctor of veterinary medicine;
- (b) Failing to establish and maintain programs of adequate veterinary care that include the availability of appropriate methods to prevent control, diagnose, and treat disease and injuries, and the availability of emergency, weekend, and holiday care;
- (c) Failing to construct indoor and outdoor housing facilities so that they are structurally sound and maintaining them in good repair to protect the animals from injury and to contain them;
- (d) Failing to adequately store food supplies to protect them from deterioration, molding or contamination by vermin;
- (e) Failing to construct a perimeter fence around dangerous animals maintained on the premises;
- (f) Failing to provide adequate natural or artificial shelter for animals kept outdoors;
- (g) Failing to provide a suitable method for the rapid elimination of excess water;
- (h) Failing to ensure that water receptacles are clean and sanitary;
- (i) Failing to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odor;
- (j) Failing to establish and maintain an adequate program of pest control;
- (k) Failing to keep premises clean and in good repair;
- (l) Failing to utilize a sufficient number of adequately trained employees to maintain the professionally acceptable level of husbandry practices;
- (m) Failing to handle animals as expeditiously and carefully as possible in a manner that does not cause physical harm, behavioral stress, and unnecessary discomfort; and

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(n) Failing, during public exhibition, to handle animals so that there is minimal risk of harm to the animals, with sufficient barriers and/or distance between the animals and the general viewing public to assure the safety of the animals and the public.

2. Respondents Joe Schreibvogel and G.W. Exotic Animal Memorial Foundation are jointly and severally assessed a civil penalty in the amount of \$25,000 which shall be paid by certified check(s) or money order(s) made payable to the Treasurer of United States and sent to:

Bernadette R. Juarez
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Bernadette R. Juarez on or before January 30, 2006. Respondents shall state on the certified check(s) or money order(s) that the payment is in reference to AWA Docket No. 05-0014.

3. Respondents Joe Schreibvogel and G.W. Exotic Animal Memorial Foundation's Animal Welfare Act license (number 73-C-0139), is suspended for two weeks, from the effective date of this order, and continuing thereafter until respondents have demonstrated to APHIS that they are in compliance with the Act, the regulations and standards issued thereunder. When respondents have demonstrated such compliance, APHIS shall seek a supplemental order lifting such suspension.

4. Respondents Joe Schreibvogel and G.W. Exotic Animal Memorial Foundation agree that, if and when the license suspension described in paragraph 3 of this order is lifted, there shall be an eighteen-month period of time thereafter which shall be referred to as the "probation period." Respondents further agree that if, during the probation period, APHIS documents evidence of respondents' failure to comply with the provisions of the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.), which, after notice and opportunity for a hearing results in the finding of a violation,

respondents' Animal Welfare Act license will be revoked. Such license revocation shall be in addition to any penalty found to be warranted for such future violations.

The provisions of this order shall become effective on the first day after service of this decision on the respondents.

Copies of this decision shall be served upon the parties.


Joe Schreibvogel
Respondent

G.W. Exotic Animal Memorial Foundation
Respondent

by its 


Bernadette R. Juarez
Attorney for Complainant

Done at Washington, D.C.
this 26 day of JAN, 2006


for Administrative Law Judge
PETER M. DAVENPORT